



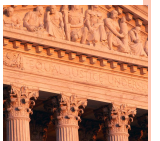
HISTORY AND PHILOSOPHY OF JUVENILE COURT

History and Philosophy of Juvenile Court

16th Century Europe

The concept of “child” so familiar to those of us living in the 21st Century was not recognized in 16th century Europe. Children were recognized only when they could contribute to the economic good of the family or village. Because there was no distinction between a child and an adult, youths who committed crimes were treated as harshly as adults.

Reform movements of the 16th century changed the public perception of children as being “miniature adults” to persons whose moral and cognitive capacities were not yet fully developed. However, severe penalties were given for even minor offenses. For example, in 17th century England, capital punishment was the penalty for over 200 crimes. Lesser crimes were punished by cutting out the tongue or cutting off of a hand or leg.

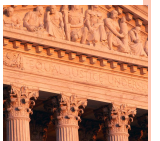


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19th Century

By the 19th century, family depravity was considered to be the root of delinquent behavior. Parental failure to raise children with the “proper” values resulted in “hooliganism” and crime. The solution was to remove children from these environments and place them in asylums and reformatories in an attempt to replicate the family functions. This approach spurred the evolution interventions that included early Houses of Refuge, rural cottage institutions, and the foundation of probation (Augustus, 1847).

Until the late 19th century children were considered property and there were no laws against child abuse. In 1859 the publication of “The Origin of Species” by Charles Darwin defined man as member of the animal kingdom. In the mid 1870s the treatment of the New York City milk horses caused concerned citizens to establish “The Society for the Prevention of Cruelty to Animals” (ASPCA). The Society succeeded in passing laws against cruelty. A few years later, the father of an abused adopted child (*In Re: Mary Ellen*) was successfully prosecuted under a statute making it a crime to be cruel to animals, alleging that Mary Ellen was a member of animal kingdom. When, in the mid 1880s a 12 year old boy was hung for being a horse thief, it became clear that children needed to be treated differently than adults.



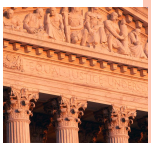
History and Philosophy of Juvenile Court

Early 20th Century

Established in 1899, and formally recognized in 1909 the Cook County (Chicago, Illinois) Juvenile Court was founded for the purpose of providing “In Loco Parentis” (In the Place of a Parent) jurisdiction and presided over neglected, dependant, and delinquent children. Michigan established a juvenile court by statute in 1907(1907 PA 323), but it wasn’t implemented until 1919, when Michigan adopted a new constitution and established juvenile court as a division of the probate court. Jurisdiction was established in the juvenile court for neglect, dependent, and delinquent cases. The juvenile court was empowered to intervene for a wide variety of transgressions; from adult crimes to juvenile status offenses. However, the need for legal representation and other rights was not recognized.

Throughout the first third of the 20th century, biological and Freudian theories became the main approaches to juvenile delinquency. The biological school believed that in most cases criminal behavior is predetermined, or at least, that those who commit crimes were predisposed toward criminal behavior due to inherent biological factors. Early biological theorists believed that certain physical characteristics—the shape of the head “Phrenology”, hands, body type (endomorph, mesomorph, and ectomorph), or chemical imbalances—were associated with a predisposition toward delinquent behavior.

Most of the psychological theories related to delinquency are based upon Freud’s theory of psychoanalysis. Parents are viewed as crucial factors in personality formation, and the inability of a child to successfully complete each psychological stage will result in some form of personality disorder. Conduct disorders and neuroses are regarded as the effects of inadequate parenting and that the delinquent behavior is simply a manifestation of an underlying personality disorder. The response to delinquency from the biological or Freudian perspective, then, is to address the behavior with the individual. Once the “illness” is discovered, it can be “treated” and the person can then be made “healthy”. These schools of thought gave rise to an array of treatment interventions; many of which are still used today.



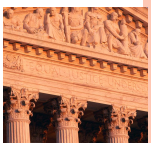
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Mid 20th Century

From the early 1930s to the 1960s, theorists insisted that delinquency could only be understood by examining both the individual and a host of external factors; that delinquency is an understandable response to conditions of poverty, discrimination, inequality and social demoralization. Peer groups and youth subcultures (gangs) encouraged delinquency because they made sense, either as a means of gaining status or pursuing success.

Much of the early sociological research on delinquency focused on the environmental issues—low income ghettos, poor housing, high population density, widely diverse population areas creating cultural conflicts, urbanization, unemployment, poverty, divorce, and political disenfranchisement—and how youth behavior adapts to the environment.

The appropriate response to delinquency under this model was to address social (external) causes as well as personal (internal) causes. The result was increased emphasis on education and recreation programs, housing, family counseling, and economic development.



History and Philosophy of Juvenile Court

Late 20th Century

Throughout the 1960s, 1970s, and 1980s a series of dramatic changes occurred which altered the juvenile probation officer/caseworker's job dramatically.

In the 1960s, the juvenile court came under attack for failing to meet public expectations. It was argued that the juvenile court offered youth offenders the worst of both worlds: procedural inequalities and harsh treatment.

During the 1960s procedural due process, formerly granted only to adult criminal defendants, was applied to juveniles. The United States Supreme Court denounced the informality of juvenile court cases and demanded that juvenile courts observe the defendant's rights, due process, and constitutional safeguards.

Several seminal cases were decided by the U.S. Supreme Court during this period; including:

1. *Kent v United States*, 383 US 541 (1966) which held that, since juveniles charged with criminal offenses potentially suffered the same loss of liberty as their adult counterparts, they should not be denied the constitutional safeguards afforded adults.
2. *In re Gault*, 387 US 1 (1967) which held that the following rights were constitutionally required:
 - adequate written notice of the charges;
 - representation by a lawyer;
 - right to remain silent; and,
 - right to confront and cross-examine adverse witnesses.

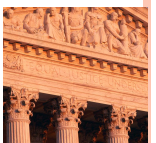


History and Philosophy of Juvenile Court

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3. The right to an acquittal unless [there is proof] beyond a reasonable doubt as to the juvenile's guilt/delinquency. *In re Winship*, 397 US 385 (1970).
4. A trial by jury is not constitutionally required in the adjudicative phase of a state juvenile court delinquency proceeding. *McKeiver v Pennsylvania*, 403 US 528 (1971).
5. Protection from being tried twice for the same offense (double jeopardy). *Breed v Jones*, 421 US 519 (1975).
6. Preventive detention . . . serves a legitimate state objective, and that the procedural protections afforded pretrial detainees...satisfy the requirements of the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *Schall v Martin*, 467 US 253 (1984).

In 1970, Congress created the Juvenile Justice and Delinquency Prevention Act, which included deinstitutionalizing of status offenders and nonoffenders, separation of incarcerated juveniles from adults, delinquency prevention, and development of community based alternatives.

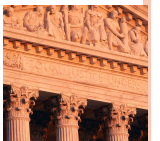


History and Philosophy of Juvenile Court

Late 20th Century

By the 1980s however, criticism that the juvenile justice system was soft on crime, and a growing perception that serious juvenile crime was on the rise, led to a swing of the pendulum to harsher penalties. Statutory reforms permitted waiver/transfer of juvenile cases to criminal courts, and in some states, mandatory sentencing guidelines for juvenile offenders.

During the 1990s, there appeared to be more interest in a “balanced approach” to juvenile justice that focused on community protection, individual accountability and competency development/treatment in the context of individualized assessment classification.



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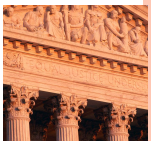
21st Century

The last decade of the 20th century and the beginning of the 21st century has seen more changes. Juvenile probation, once seen as progressive has come to be viewed as conservative and antiquated. The victim rights movement, and legislation that facilitated waiver of juveniles to adult court, expanding the number of offenses and lowering the age at which juveniles would automatically be prosecuted in adult court has also occurred.

The concept of “restorative justice” has gained momentum. Restorative justice includes the victim and the community as participants in the resolution of juvenile crime problems.

BALANCED AND RESTORATIVE JUSTICE

Balanced and Restorative Justice (BARJ) has become a model for effective court and probation services.

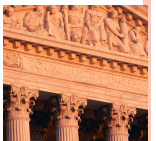


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Balanced and Restorative Justice

BARJ has the following principles:

- Crime is injury;
- Crime hurts individual victims, communities, and juvenile offenders and creates an obligation to make things right;
- All parties should be part of the response to crime; including the victim (if he or she wishes), the community and the juvenile offender;
- The victim's perspective is central to deciding how to repair the harm caused by the crime;
- Accountability for the juvenile means accepting responsibility for the well-being of community members, including both the victim and offender;
- All human beings have dignity and worth;
- Restoration—repairing the harm and rebuilding relationships in the community—is the primary goal of restorative juvenile justice;
- Results are measured by how much repair was done, rather than by how much punishment was inflicted;
- Crime control cannot be achieved without active involvement of the community; and
- The juvenile justice process is respectful of age, abilities, sexual orientation, family status, and diverse cultures and backgrounds—whether racial, ethnic, geographic, religious, or economic—and all are given equal protection and due process.



History and Philosophy of Juvenile Court

Balanced and Restorative Justice

The balanced and restorative justice philosophy identifies three primary goals:

Accountability: *When an offense occurs, the offender incurs an obligation to the victims and the affected community. The offender is required to acknowledge responsibility and also must take some direct action to repair the harm caused by the offense. The offender's obligation is to a person and a community rather than to a system.*

Competency Development: *Each offender should leave the juvenile justice system more capable of being a productive community member than when they entered the system. The restorative justice philosophy supports the belief that young offenders will do best when allowed to practice and demonstrate competencies and to build strong relationships with law-abiding community members. Attempts to change behavior and thinking should include the engagement of youthful offenders in productive activity that is of benefit to others.*

Community Safety: *The juvenile justice system has a responsibility to protect the public from juveniles under its care. Restorative justice recognizes the need to provide secure confinement for those youth who present a clear risk to others' safety and cannot be managed in the community. Although maximum voluntary cooperation is the ideal, there is a need for outside authority to make decisions for uncooperative offenders. This may necessitate confinement of the offender.*

For those offenders who remain in or return to the community, the community safety goal requires that their time is structured around work, education, community service, and ongoing treatment and competency development needs.



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Restorative Practices

Restorative Practices

Described below are some practices that incorporate restorative values and principles.

Victim/Offender Dialogues: A trained facilitator brings together victims and their offenders in a meeting. During the meeting the victims describe the impact of the crime on them and their families. The offender explains what they did and why and answer the questions the victim may have. Victim/offender dialogues are not resolution driven but can result in agreements that specify what the offender will do to make things right to the greatest degree possible.

Community Conferencing: Involves secondary victims and supporters of the offender in addition to the primary victim and offender in the process. In addition, representatives of the juvenile justice system may participate. After both the victim and offender have spoken the other participants have the opportunity to speak and, together, the group decides what the offender needs to do to repair the harm and what assistance the offender will need to do so.

Family Group Conferencing: Is a process that brings together the family members and their close support systems to develop and carry out a plan.

Through discussion, a plan is developed that provides resolution and shapes future behaviors. The offender describes the issue, event or crime from their perspective and each participant describes the impact of the harmful behavior on his or her life. Desired outcomes are identified and all participants have the opportunity to contribute to the problem solving process. The session ends with the participants signing an agreement outlining their expectations and commitments.



PHILOSOPHY OF JUVENILE COURT

A WORD ABOUT PHILOSOPHY AND A QUESTION FOR YOU

By Honorable Frederick Mulhauser (excerpted)

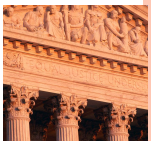
History and **Philosophy** of Juvenile Court

A Word About Philosophy and a Question For You

By Honorable Frederick Mulhauser

Why should this job be important to you? Why should you invest yourself into this work? Is this a job or is it work with a positive social purpose?

The juvenile court system was established in the 1890s in response to the recognized social and developmental differences between adults and children. Over the next century, a fully developed an entirely new court process was created. In this new format even the language changed, indictments became petitions, trials became adjudications and sentencing became dispositions. Whereas, in adult court, people were sentenced to a definite period of incarceration, juveniles could be kept in the juvenile system until they became rehabilitated. This change in approach to juveniles did not hold that punishment had no place, only that for change to be successful more than punishment is needed.



A Word About Philosophy and a Question For You

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As this new philosophy progressed, the treatment of delinquent youth developed three important prongs or pillars.

1. The concept of punishment is preserved as a primary pillar, but is often presented as a “consequence” of behavior.
2. Restitution where damage to a victim is involved. This may be emotional damage as well as property damage. As with community service, restitution may be more than repayment standing alone. Restitution and community service may also be learning tools when creatively used.
3. Rehabilitation. The most important pillar, rehabilitation, aims at long-lasting behavior change. Elements of the first two pillars are often an integral part of rehabilitation.



History and **Philosophy** of Juvenile Court

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Each of us has an opportunity that is given to very few people in our society. That is the opportunity to help create a change that will affect the society in which we live. We can make life better and safer for ourselves and those around us and that change may have a positive effect on future generations.

So, if you have decided that this job will be your work, then you are to be commended for all the good you will do and as a member of your community you are to be recognized on behalf of those future generations who will benefit from your efforts. Good luck.

